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LANGUAGES SERIES

NUMBER IV

MONTESQUIEU IN AMERICA

1760–1801

A Portion of a Dissertation submitted to the Board of
University Studies of the Johns Hopkins University
in conformity with the requirements for the
Degree of Doctor of Philosophy
1936

BY

PAUL MERRILL SPURLIN

Baltimore.

LOUISIANA STATE UNIVERSITY PRESS
UNIVERSITY : LOUISIANA : 1940

ROMANCE LANGUAGES SERIES

NUMBER 4

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To

Alix and Paula

PREFACE

In 1797 life-size waxen figures of Voltaire and Rousseau were exhibited in Philadelphia as part of a traveling collection. For a fee citizens of the good and gay capital city gazed at the mute features of these giants of the "Age of Enlightenment." Had it been possible for the two *philosophes* themselves to hear the remarks of the American spectators, they would have been amused and perplexed. By some they would have heard their memories execrated; by others, highly praised. It all depended upon one's politics and religion.

Montesquieu's effigy was not included in this unusual collection.

As an evidence of interest in Voltaire and Rousseau as writers, no importance can be attached to the curiosity of Americans in such an exhibition. One's attention, nevertheless, is engaged by the knowledge that images of celebrated French authors were paraded about American cities at the close of the eighteenth century. Up to this time there had indeed been a slowly developing interest in America in the language and literature of France. This interest, furthermore, had been quickened by contacts with French soldiers, French travelers, and, after the middle of the century, by the introduction of French into college curricula.

Montesquieu, Voltaire, and Rousseau were the most important writers in eighteenth-century France. Just how

important were they in America in this same century? No comprehensive studies of their importance in this period have as yet appeared.

In the following pages an attempt has been made to establish the position of Montesquieu in America in the last half of the eighteenth century.

Much information has been accumulated on the general culture and reading matter of eighteenth-century Americans. On a given point, however, this information is often scanty, uncoordinated, and sometimes even inaccurate. But the patient efforts of investigators have resulted in a clearer conception of the nature of that culture. Critical and unbiased research by scholars in more recent years has given us a better notion of certain literary and intellectual connections existing in that century between America and Europe.

The work done by literary historians in the last half century has promoted the growth of a certain methodology. This methodology, however, is not infallible, and we have learned to be exceedingly cautious in the matter of influences. Therefore, in these pages a narrower and safer course has been followed. Rather than discuss the influence of Montesquieu on American thought, I have preferred to examine closely the dissemination of his writings in America, the judgments of Americans upon him, and the use they made of him in the forty critical years of American history between 1760 and 1801. The wider knowledge which the present book may bring to moot questions of long standing is relative. An effort has been made, however, to achieve representative completeness.

In its original form this study, which has since undergone revision and to which additions have been made, was presented as a doctoral dissertation in the Johns Hopkins University under the title of *Montesquieu and American Opinion.*

To Professor Gilbert Chinard, of Princeton University, who first proposed the subject of this investigation, I wish to express my grateful appreciation. To him I am indebted for generous guidance, many valuable ideas, and advice as to division of the matter. I alone, however, assume all responsibility for the development of the subject and, of course, for the conclusions which emerge from the treatment of the matter. While it is impossible to acknowledge one's obligation to all who, in book or conversation, suggested ideas and started trains of thought, I must declare my particular obligation to Professor William Stull Holt, of the University of Washington, for stimulating suggestions and bibliographical indications in the field of American history. I wish also to thank the members of the staffs of the following libraries, who by their aid and many courtesies have greatly facilitated my research: the Historical Society of Pennsylvania, the Maryland Historical Society, the Maryland State Library, the Peabody Library, the Ridgway branch of the Library Company of Philadelphia, and the Library of Congress. To my colleagues, Professors Hoguet A. Major, Wyatt A. Pickens, Cecil G. Taylor, and John A. Thompson, and also to Mr. William A. Eichengreen, of Baltimore, I am obliged for assistance in reading the proof; and to Professor Lynn Marshall Case, Mr. Jacques Villeré, and Miss Maud Trappey of this University for their kind aid.

To Professor Henry Carrington Lancaster, of the Department of Romance Languages of the Johns Hopkins University, my hearty thanks for friendly counsel and encouragement.

Finally, to Professor James F. Broussard, Head of the Department of Romance Languages of the Louisiana State University, and to Dr. Marcus M. Wilkerson, Director of the Louisiana State University Press, who made the publication of this book possible, I should like to acknowledge my gratitude.

PAUL MERRILL SPURLIN

Baton Rouge, La.
September 17, 1940.

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Chapter I

INTRODUCTION

Epoch-making books often produce in their readers and critics widely divergent points of view. Subjected to close scrutiny, the ideas they contain frequently are combated and defended with equal vigor. Occasionally, the authors themselves become targets for abuse or objects of special veneration. Correct evaluations of such books and fair opinions of their authors are by no means easy matters for contemporary men of letters.

When these books, by virtue of their fame and significance, break through national boundaries and penetrate into other countries, still greater differences of opinion of books and authors are obviously not only possible but also highly probable. The task of the literary historian, whose duty it is to judge of their importance years afterward, becomes correspondingly more difficult.

This is especially true of books written in the eighteenth century, a time when new orders and new institutions were rising. New thoughts and theories and systems were going the rounds; old ones reappeared or paraded about in novel disguise. In the covert or open assaults of that time upon every citadel of the established order, authors frequently had recourse to the ammunition box of common intellectual property. It is hardly astonishing, therefore, that opposite convictions, confusion, and uncertainty have sometimes resulted from attempts to render

categorical pronouncements upon literature of that century.

Thus it is with works of Charles Louis de Secondat, Baron de la Brède et de Montesquieu (1689–1755). From the appearance in 1721 of his celebrated *Persian Letters,* and especially following the publication in 1748 of the epochal treatise on the *Spirit of Laws,* the author and his writings have inspired almost countless books, commentaries, articles, speeches, and lectures.[1] The gay and biting *Letters* had been published, anonymously as were all of his works, while he still exercised the grave and important functions of a *président à mortier,* or justice, of the Parlement of Guyenne. Inherited from an uncle in 1716, this magistracy was occupied by Montesquieu for a decade. The tedious routine of judicial duties did not, however, dampen other interests or consume all his en-

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[1] It is possible here only to mention the compendious literature relating to the author. From a wealth of material some selection, nevertheless, must be made. The following works constitute a few of the more important sources for bibliographical and biographical information:

Louis Dangeau (pseud. of Louis Vian), *Montesquieu—Bibliographie de ses Œuvres* (Paris, 1874).

Édouard Laboulaye, ed., *Œuvres complètes de Montesquieu, avec les variantes des premières éditions, un choix des meilleurs commentaires et des notes nouvelles* (Paris, 1875–79). 7 vols.

J.-M. Quérard, *La France Littéraire* (Paris, 1834), VI.

G. Lanson, *Manuel bibliographique de la littérature française moderne* (Paris, 1931).

Lawrence Meyer Levin, *The Political Doctrine of Montesquieu's Esprit des Lois: Its Classical Background* (New York, 1936). Cf. Part V (Bibliography).

Louis Vian, *Histoire de Montesquieu, sa vie et ses oeuvres d'après des documents nouveaux et inédits* (Paris, 1878).

Albert Sorel, *Montesquieu* (Paris, 1887). There is an English translation by M. B. and E. P. Anderson (Chicago, 1888).

H. Barckhausen, *Montesquieu ses idées et ses oeuvres d'après les papiers de la Brède* (Paris, 1907).

François Gebelin and André Morize, eds., *Correspondance de Montesquieu* (Paris, 1914). 2 vols.

ergy. The year of Montesquieu's accession to the *présidence à mortier* also witnessed his admission to the Academy of Bordeaux, to which he contributed from time to time papers on philosophic and scientific subjects. Grave communications to the Academy of Bordeaux, memberships in the Royal Society of London, in the academies of Stanislas, Cortona, and Berlin, however, were only part of the story.

Montesquieu was not only a man of the study but also a man of the world. He had become an associate of the radically inclined Parisian Club de l'Entresol, which numbered among its members Bolingbroke, the Abbé de Saint-Pierre, and d'Argenson. He frequented the Château de Chantilly, where lived Mademoiselle de Clermont, sister of the Duke of Bourbon, Prime Minister of Louis XV. For her he wrote the light and amatory *Temple of Gnidus* (1725) and later, in the same vein, the *Voyage to Paphos*.

In 1728 Montesquieu became a member of the French Academy. Having disposed of his magistracy, he now set out on travels[2] which were to influence greatly his most important works. He visited Austria, Germany, and Hungary. He traveled in Italy. In October, 1729, Montesquieu sailed with Lord Chesterfield, in the latter's yacht, from The Hague for England. The English stay[3] was to last about eighteen months.

After his return to France the author devoted himself anew to study, the interests of his barony, and to society. An indefatigable reader, a thoughtful student, he again found pleasure in the banter of the drawing room, the

[2] Cf. the *Voyages de Montesquieu*, published by Baron Albert de Montesquieu (Bordeaux, 1894–96). 2 vols.

[3] Cf. J. C. Collins, *Voltaire, Montesquieu and Rousseau in England* (London, 1908).

conversation of friends, and the company of ladies such as Mesdames d'Aiguillon, de Tencin, and du Deffand.

The works of Montesquieu reflect this double nature of man of the world and man of the study. In this respect, as well as by his earlier interest in the sciences, he reveals characteristics common to many leading figures of the *Age de la Raison.* Parts of the *Persian Letters,* minor writings such as the two he wrote for Mademoiselle de Clermont, are frankly gallant. On the other hand, the significant part of the *Letters,* other minor works, and especially the two most important works, reveal Montesquieu's earnest and sober nature. The masterpieces, the *Reflections on the causes of the rise and fall of the Roman empire* (1734) and the great treatise on the *Spirit of Laws,* were the products of much reading and thinking, the latter work being written after twenty years of study. His literary renown swept quickly past the frontiers of France, and Montesquieu interested, and continues to interest, innumerable persons.[4] Many translations have been made of his separate works or parts of them.[5]

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[4] Among more recent studies are the following:

H. Knust, *Montesquieu und die Verfassungen der Vereinigten Staaten von Amerika* (Munich and Berlin, 1922).

F. Cattelain, *Étude sur l'influence de Montesquieu dans les constitutions américaines* (Besançon, 1927).

E. Carcassonne, *Montesquieu et le problème de la Constitution française au XVIII^e siècle* (Paris, 1927).

Muriel Dodds, *Les récits de voyages, sources de l'Esprit des Lois de Montesquieu* (Paris, 1929).

G. Bonno, *La Constitution britannique devant l'opinion française de Montesquieu à Bonaparte* (Paris, 1931).

F. T. H. Fletcher, *Montesquieu and English Politics (1750–1800)*, (London, 1939).

Lawrence Meyer Levin, *op. cit.*

[5] It is sufficient to note, among the translations into English in the last half of the eighteenth century, the following publications:

From the more remote days of the eighteenth century when a volume of Montesquieu occasionally found its way across the Atlantic to a comparatively recent date when an assumption was prevalent that theories contained in his works had found their way into her governmental structure, especially into the Constitution, America has been concerned with Montesquieu.

Various opinions of him have been entertained by Americans. Even from the outset, there were sporadic attacks against him, against his theories, one, indeed, of a long and violent nature near the close of the eighteenth century. Only in somewhat recent years, however, has the general assumption been heavily and repeatedly contested. Thus there have been and are those who have persistently claimed for Montesquieu an important part in the development of American political institutions; others have vigorously disclaimed any importance whatsoever. The most significant fact of all is that a century

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Complete works. 4 vols. (Dublin, 1777).

Complete works. 4 vols. (London: Evans, 1777).

The Spirit of Laws. 2 vols. (London, 1750). First English edition. Translated by Thomas Nugent (English man of letters and translator, 1700?–72).

The Spirit of Laws. 2 vols. (London, 1752). 2nd ed.

The Spirit of Laws. 2 vols. (London: Nourse and Vaillant, 1758). 3rd ed.

The Spirit of Laws. 2 vols. (London: Nourse and Vaillant, 1773). 5th ed.

The Spirit of Laws. 1 vol. (London: F. Wingrave, 1793). 6th ed.

A view of the English constitution. By the late Baron de Montesquieu. Being a translation of the sixth chapter of the eleventh book of his celebrated treatise, intitled L'esprit des loix (London, 1781).

Reflections on the causes of the rise and fall of the Roman empire. New edition. To which is prefixed, an account of the life and writings of the author (Edinburgh, 1775).

Persian Letters. 2 vols. (London, 1762). 4th ed.

The Temple of Gnidus (London, 1765).

Miscellaneous Pieces of M. de Secondat, baron de Montesquieu. Translated from the New Edition of his Works in Quarto printed at Paris (London, 1759).

No work of Montesquieu was ever published in America in the eighteenth century.

and a half after the foundation of the Republic, scholars and critics still disagree as to the place this dominant eighteenth-century thinker occupied in the esteem of Americans of the same century.

To select from earlier opinions examples representative of each of these two viewpoints, those of a distinguished Frenchman and a scholarly American are apropos. Édouard Laboulaye, member of the Institut de France, professor of comparative legislation in the Collège de France, and the editor of Montesquieu's complete works, expressed, in the following translated passage, his belief, characteristic of the traditional conception:

> . . . less notice has been taken of the influence of Montesquieu on the federal Constitution of the United States. If one reads the third chapter of the ninth book [*Spirit of Laws*], he will find the first germ of the Union. Here Montesquieu offers the republic of Lycia as an example of a fine federative republic because in the determination of its suffrage, magistrateships, and taxes attention was paid to the comparative relation of votes . . .; the authority of the whole people dominated the unnatural sovereignty of the city-states; the Union outweighed the States in importance.
>
> This was the very problem which the Americans had to solve in 1787. Did they consult Montesquieu? Yes, without doubt; the notes of Washington on the different federative constitutions have been preserved; one has been surprised to see that he, so little erudite by nature, had noted the constitution of Lycia. It is too evident that he had taken all his knowledge from Montesquieu.[6]

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[6] "Étude sur *l'Esprit des Loix,* de Montesquieu," *Revue de Droit international et de Législation comparée,* I (1869), 171. Cf. *idem* in his edition of the *Œuvres complètes de Montesquieu,* III, xvi–xvii.

Laboulaye's surmise is not supported by the evidence. The notes to which Laboulaye must refer were copied, word for word, from a memorandum prepared by James Madison prior to the Federal Convention. One has only to compare Washington's notes entitled "An Abstract of the General Prin-

Typifying the opposite school of thought is this statement of James Breck Perkins, an investigator in the field of Franco-American relations:

> By French literature the colonists were unaffected, because, with few exceptions, they knew nothing about it. The number who could read French was small, the number who did read French to any extent was smaller . . .; the political theories of Montesquieu and of Rousseau, the wit of Voltaire, the infidelity of the encyclopaedists, had no influence upon men, the most of whom did not know these writers even by name. Our ancestors' modes of thought were essentially English; the political traditions which they inherited, the political institutions which they founded, were unaffected by French thought.[7]

Patriotism, even jealousy, might be advanced in partial explanation of assertions and denials of influence by those who actually aided in establishing the American government. But such factors have no part in the honest opinions of scholars who, from the vantage point of history, have had an opportunity to weigh the matter. Yet between the extreme and contradictory statements of Laboulaye and Perkins, one finds expressed every variety of opinion. At no time has there been any unanimity among scholars as to the influence of Montesquieu in America. There has been a preponderance of opinion in favor of his influence on the separation of powers principle. Even

ciples of Ancient and Modern Confederacies" (Cf. Jared Sparks, ed., *The Writings of George Washington* [New York, 1847], IX, 521–38, App.) with Madison's memorandum "Of Ancient & Modern Confederacies." (Cf. Gaillard Hunt, ed., *The Writings of James Madison* [New York, 1900–10], II, 369–90.) The source of these notes in Washington's handwriting, which are in the Manuscript Division of the Library of Congress, has been pointed out before, but Sparks (cf. *op. cit.*, p. 521 n.) could not give any account of Washington's manuscript although he said that "It could hardly have been drawn up originally by him, ..."

[7] *France in the American Revolution* (Boston and New York, 1911), pp. 418–19.

with regard to this one point, however, there exists, and always has existed, diversity and debate. At all events, the real story of Montesquieu in America has been practically obscured by almost wholehearted attention to this one theory. Rightfully or wrongfully, it overshadows the rest, about which little or nothing is known. A hasty survey of critical opinion will substantiate the accuracy of these observations.

According to A. C. Coolidge, one of the earliest investigators of the subject, Montesquieu was frequently and deferentially quoted in America. Moreover, the makers of the Constitution were "impregnated" with the philosophy of the French publicist. Coolidge was admirably aware of the difficulties involved in attributions of influence.[8] Nevertheless, Montesquieu, in his opinion, was influential directly and also indirectly through followers such as Blackstone and De Lolme.

Emphasizing the unanimity with which the theory of separation of powers was accepted in America, William Bondy points to certain utterances of some of the Fathers. These "authorities," to quote Bondy, "suffice to show how saturated with the philosophy of Montesquieu were the

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[8] *Theoretical and Foreign Elements in the Formation of the American Constitution* (Freiburg, 1892), pp. 31–32.

"MONTESQUIEU'S influence on the formation of the Constitution was certainly great, ... But we must be careful about what we ascribe to this influence. . . . Now, it is evident that if MONTESQUIEU'S principles were formed on the British Constitution, features of that constitution, transferred, directly or through the medium of examples in the State Governments, to the American one, cannot be said to be due to his influence only even if harmonizing with his theories. Nor does the fact that his doctrines are quoted as being in conformity to some institution prove that they had anything to do with its creation. We must therefore be very cautious in any inquiry into the subject. On the other hand we can remember that, as his dogmas had been violated in the Government of the discredited Confederation, that very discredit would tend to their honor."

minds of those distinguished statesmen who, having conquered for us our independence, firmly secured our liberty. It is, therefore, not surprising for us to find that when the American state, as represented in the National Convention of 1787, was about to dispense governmental powers, it adopted as its first resolution that 'a national government ought to be established, consisting of a supreme legislature, judiciary, and executive.' " [9]

In the same enthusiastic vein, more boldly perhaps, Sir Henry Maine declared: "It may be confidently laid down, that neither the institution of a Supreme Court, nor the entire structure of the Constitution of the United States, were the least likely to occur to anybody's mind before the publication of the 'Esprit des Lois.' " [10]

The *Spirit of Laws,* according to Francis Newton

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[9] *The Separation of Governmental Powers in History, in Theory, and in the Constitutions, Studies in History, Economics and Public Law* (Columbia College, New York, 1896), V, No. 2, 20.

He also states that the framers of the state constitutions were influenced by Montesquieu's theory of separation. Cf. *ibid.,* p. 74.

[10] *Popular Government* (5th ed., London, 1897), pp. 218 ff. "There are," asserts Maine, "few traces in the 'Federalist' of familiarity with previous speculations on politics, except those of Montesquieu in the 'Esprit des Lois,' the popular book of that day. The writers attach the greatest importance to all Montesquieu's opinions. They are much discomposed by his assertion, that Republican government is necessarily associated with a small territory, and they are again comforted by his admission, that this difficulty might be overcome by a confederate Republic." (*Ibid.,* p. 204.)

Montesquieu's principle of separation of powers, according to Maine, was of prime authority to the writers of *The Federalist;* and in his insistency on the independence of the judiciary, "we have, no doubt, the principal source of the provisions of the American Constitution respecting the Federal Judicature." (*Ibid.,* p. 220.)

Oliver Wendell Holmes, in a critical and biographical introduction to a reprint of the *Spirit of Laws* published in New York in 1900, wrote as follows: "He [Montesquieu] was an authority for the writers of *The Federalist.* He influenced, and to a great extent started scientific theory in its study of societies, and he hardly less influenced practice in legislation, from Russia to the United States." See his *Collected Legal Papers* (New York, 1920), p. 264.

Thorpe, had more influence on eighteenth-century American political thought than any other work on government. Moreover, it was the political Bible of Jefferson and a primer to Washington, Madison, and Hamilton.[11]

In a similar vein Albert Bushnell Hart declared that Montesquieu's "book was much read in the colonies; and he had more influence than any other writer in the development in America of balanced governments of three departments."[12]

Likewise wrote Frank J. Goodnow: "It has already been intimated that Montesquieu's theory of the separation of powers was made the basis of the system of government adopted in the United States at the end of the eighteenth century. A perusal of the writings of those men who influenced most profoundly the political thought of the time will reveal a practically unanimous acceptance of the theory."[13] Woodrow Wilson held the same view:

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[11] *The Constitutional History of the United States* (Chicago, 1901), I, 155.

"Jefferson was then twenty-two years of age and was reading Locke, Sydney and Priestley, on government; and the greatest political treatise of the century, Montesquieu's 'Spirit of Laws,' written when Jefferson was five years of age, was his political Bible. That book more than any other on the subject of human government, influenced American political thought in the eighteenth century. It was the primer of government to Washington, Madison and Hamilton. It aided Jefferson to give form to the grand ideas of the Declaration as eleven years later it aided Madison, Morris, Ellsworth, Franklin and Wilson and their associates in making the Constitution of the United States." (Cf. Index for other references.)

Jefferson could hardly have been reading Priestley on government at the age of twenty-two (1765) because the *Essays on the Principles of Governments, and on the Nature of Political, Civil, and Religious Liberty* was not published until 1768.

[12] *American History told by Contemporaries* (New York, 1900–17), II, 144.

[13] *The Principles of the Administrative Law of the United States* (New York, 1905), p. 31. In a later work Goodnow said:

The makers of our federal Constitution followed the scheme as they found it expounded in Montesquieu, followed it with genuine scientific enthusiasm. The admirable expositions of the *Federalist* read like thoughtful applications of Montesquieu to the political needs and circumstances of America. They are full of the theory of checks and balances. . . . Our statesmen of the earlier generations quoted no one so often as Montesquieu, and they quoted him always as a scientific standard in the field of politics.[14]

Elsewhere one notes that in the decade and a half prior to the American Revolution "The French work which produced most influence on the formation of opinion at this early period [1760–76] is Montesquieu's *Esprit des Lois.*"[15]

Other citations of the same nature might be introduced here. It will suffice to show by a few opinions that some more recent writers are also in general accord with the views above expressed. Edward S. Corwin thinks that

"When our governmental system was established, the political thinkers of the world lay under the spell of the great philosopher Montesquieu, who, in his 'Esprit des Lois' had set forth with such force his famous principle of the separation or distribution of the powers of government. Up to the time of the adoption of the American constitutions this principle had been a political theory whose observance in general outline was regarded as essential to constitutional government. With its incorporation into American written constitutions, ..." (*Social Reform and the Constitution* [New York, 1911], pp. 16–17.)

[14] *Constitutional Government in the United States* (New York, 1911), pp. 55–56. Cf. *idem, The President of the United States* (New York, 1916), pp. 5–7. In this latter work Wilson, referring to the fact that in American history the executive branch has not always been a perfectly balanced part, says (p. 14): "We have all been disciples of Montesquieu, but we have also been practical politicians." Cf. also his *History of the American People* (New York, 1918), X, 118, in which he speaks of "the literary theory of the constitution, the theory which the makers of the constitution had accepted from M. Montesquieu."

[15] Edward Channing, A. B. Hart, and F. J. Turner, *Guide to the Study and Reading of American History* (Revised and augmented ed., Boston, 1912), p. 297.

the *Spirit of Laws* was of "vast influence" in the framing of the Constitution.[16]

"The state constitutions," writes R. L. Schuyler, "all recognized the three-fold division of the powers of government, which Montesquieu had made current in political discussion, and provided for their exercise by separate departments." [17]

The colonists, according to Edward Elliott, "were little influenced by French ideas save in the single case of Montesquieu." [18]

John Dickinson also speaks of "Montesquieu, to whom we owe so many of our constitutional difficulties in connection with the 'separation of powers' doctrine; . . . ." [19]

In a résumé of some of the sources of American political theory, C. E. Merriam stated: "Of French thinkers by far the strongest influence exerted on American theory was that of Montesquieu, through the famous doctrine of the tripartite division of governmental powers. This proposition was readily taken up from the first, and remains to this day scarcely contested." [20]

Max Farrand [21] thought that the writings of the French

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[16] *The President's Control of Foreign Relations* (Princeton, 1917), p. 35. "Another work of vast influence with the framers of the Constitution was Montesquieu's 'Spirit of the Laws,' . . . ."

[17] *The Constitution of the United States* (New York, 1923), p. 19.

[18] *Biographical Story of the Constitution—A Study of the Growth of the American Union* (New York, 1924[?]), p. 6.

[19] *Administrative Justice and the Supremacy of Law in the United States* (Cambridge, 1927), p. 122 n.

[20] *A History of American Political Theories* (New York, 1928 ed.), p. 337.

[21] *The Framing of the Constitution of the United States* (New Haven, 1930).

Discussing one defect of the old confederation as the members who assembled for the Philadelphia Convention saw it, Farrand writes: "Some of the more superficial observers were inclined to ascribe the difficulties of the confederation to the defective organization of the government. Montesquieu, whose writings were taken as political gospel, had shown the absolute neces-

publicist were accepted by the framers as "political gospel." And to Howard Mumford Jones "The importance of Montesquieu in the intellectual life of eighteenth-century America is too well established to require comment." [22]

Two other groups of scholarly opinion are distinguishable. It is, however, often difficult to draw a sharp line of demarcation between them. Generally speaking, one may say that the scholars of the first of these two groups, although emphasizing fully the importance of colonial tradition and practice, point also to the influence of Montesquieu on American thought and institutions; or on a given point one may concede to Montesquieu a position of joint influence with another thinker. In the last group, scholars, even though they may readily admit that the French author was frequently cited, are inclined either to minimize or to deny his influence. In this group are critics who firmly insist on the power and influence of precedent and practical experience over pure theory. Others may well accord to English philosophers the dominant place in colonial thought.

The conclusions of James Bryce and a few others may be taken as illustrative of the first of these two groups. The members of the Constitutional Convention, Bryce pointed out, had three sources of information respecting the English Constitution: experience; its legal presenta-

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sity of separating the legislative, executive, and judicial powers. There ought, therefore, to be a separate executive. . . ." (Pp. 49–50.)

Cf. also F. J. C. Hearnshaw, *The Social and Political Ideas of Some Great French Thinkers of the Age of Reason* (London, 1930), p. 114, and Herman Finer, *The Theory and Practice of Modern Government* (London, 1932), I, 162 ff., for recent English affirmations of Montesquieu's influence on the Constitution.

[22] "The Importation of French Books in Philadelphia, 1750–1800," *Modern Philology,* XXXII, No. 2 (November, 1934), 168.

tion in textbooks, particularly that in Blackstone's *Commentaries;* and, finally, the views of it contained in the writings of eighteenth-century political philosophers. Of these he considered Montesquieu the most important:

> They had for their oracle of political philosophy the treatise of Montesquieu on the Spirit of Laws, which, published anonymously at Geneva forty years before, had won its way to an immense authority on both sides of the ocean. Montesquieu, contrasting the private as well as public liberties of Englishmen with the despotism of Continental Europe, had taken the Constitution of England as his model system, and had ascribed its merits to the division of legislative, executive, and judicial functions which he discovered in it, and to the system of checks and balances whereby its equilibrium seemed to be preserved. No general principle of politics laid such hold on the constitution-makers and statesmen of America as the dogma that the separation of these three functions is essential to freedom. It had already been made the groundwork of several State constitutions. It is always reappearing in their writings: it was never absent from their thoughts. Of the supposed influence of other Continental authors, such as Rousseau, or even of English thinkers such as Burke, there are few direct traces in the Federal Constitution. . . .[23]

Another English critic, C. Ellis Stevens, reasoned in a manner quite similar to Bryce. The views of both concerning the available sources of constitutional information and their influence upon the members of the Convention of 1787 were substantially the same. Like Bryce, Stevens attached high importance, especially for members in the Convention, to the authority of the *Esprit des Lois.* Regarding tripartite separation of powers, however, Stevens, in pointing to the literary influence of

[23] *The American Commonwealth* (Revised and augmented ed., New York, 1910), I, 29. See also *ibid.*, p. 283.

Montesquieu on this point, insisted that "The law commentaries of Sir William Blackstone also influenced the Convention in the same direction." The position of Stevens is summarized in his comment on the sanguine statement of Sir Henry Maine concerning the tremendous influence of Montesquieu on the American judiciary and Constitution (cf. n. 10, *supra*):

But although this influence of Montesquieu in promoting the independent relation of the judiciary in the American Constitution is unquestionable, the Philadelphia Convention had before its eyes in this, as in other matters, the colonial adaptation of English usage then existing in the States of which the new nation was composed. And the testimony of the *Federalist* is exceedingly explicit on this point.[24]

To this same group may be added a few opinions by American scholars. Allan Nevins affirms:

Not only upon the practice of a century and a half, but upon the political theorizing of the same period—the writings of Harrington, Milton, Hume, Locke, Blackstone, Montesquieu, and others—were the new American constitutions built.[25]

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[24] *Sources of the Constitution of the United States considered in relation to colonial and English History* (New York, 1894. This edition, the second, has been reprinted by the same company, 1927.), pp. 185–86. Cf. also pp. 45–49.

[25] *The American States During and After the Revolution 1775–1789* (New York, 1924), p. 119. See also *ibid.*, pp. 120, 121, and 165. On the subject of the provision for a Council of Censors under the Pennsylvania Constitution of 1776, Nevins, by a prosopopoeia, simply recalls to Pennsylvanians disappointed with it that both Montesquieu and Rousseau had spoken in praise of the Roman censorship (p. 153). Very suggestive is the following statement of Nevins apropos of a point of prime importance to the Federal Convention:

"The only well-known writer who had spoken in praise of the plan of confederating separate states [before 1787] was Montesquieu, and he only in a few short paragraphs and the most general terms; eulogizing, as Hamilton pointed out in the ninth essay of the Federalist, the confederated republic as a means of uniting the external advantages of large monarchies with the internal advantages of small republics" (p. 553).

Even more pointed references are contained in the statements by Nevins quoted in the following paragraph.

In the years preceding 1776 and 1777, the two years which saw the writing of these new state constitutions, "Locke's and Montesquieu's insistence upon the separation of powers into tight compartments corresponded with all the predilections of Americans." And "Montesquieu's careful analysis of the English government as an illustration of the dependence of political liberty upon checks and balances naturally appealed to Anglo-American readers. There were few New World students of politics [in the latter half of the century] who had not a thorough acquaintance with both Locke and Montesquieu." In the writing of the early state constitutions, "the colonists, following Locke and Montesquieu, sought to poise the executive, legislative, and judicial branches."

R. G. Gettell declares that

> French influence was most important in the period following the American Revolution. The agrarian doctrines of the Physiocrats appealed to one group of American thinkers, led by Franklin and Jefferson; and the separation-of-powers theory of Montesquieu received general acceptance.[26]

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[26] *History of American Political Thought* (New York, 1928), p. 22. Elsewhere, the author apropos of state constitutions of the revolutionary period, says: "They followed rather the doctrine which was brought to the attention of eighteenth-century political philosophers by Montesquieu, who believed that liberty was best safeguarded when the powers of government were not concentrated in a single department, and who made the orthodox division into legislative, executive, and judicial." (*Ibid.*, pp. 102–3.) Cf. the following statements of Justice Story:

"Montesquieu seems to have been the first who, with a truly philosophical eye, surveyed the political truth involved in this maxim in its full extent, and gave to it a paramount importance and value. As it is tacitly assumed, as a fundamental basis in the Constitution of the United States, in the distribution of its powers, it may be worth inquiry, what is the true nature, object, and

In general harmony with the views of Bryce, Stevens, and Gettell are those of W. S. Carpenter:

> The later colonists turned to Montesquieu as the oracle to be consulted on the subject of the separation and balance of powers.[27] . . . Across the black morass of English political corruption the principles of Montesquieu loomed to American statesmen all the more vividly. The doctrine of the separation of powers and the systems of checks and balances appeared not only correct as theories but also fitted in with colonial experience.
>
> Although the writings of Montesquieu were widely read and accepted in America as political gospel, the principles they set forth were already known to colonists.[28]

It has already been said that at no time has there ever existed any unanimity of opinion as to the French publicist's influence in America. If the foregoing should be judged as inadequate proof, one has only to glance at the following conclusions of scholars of the third group as distinguished above. Thus George Bancroft wrote that

> There were other precursors of the federal government; but the men who framed it followed the lead of no theoretical

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extent of the maxim, and of the reasoning by which it is supported." (Joseph Story, *Commentaries on the Constitution of the United States* [5th ed., Boston, 1905], I, 389–90.)

After quoting statements from Montesquieu, Blackstone, *The Federalist*, and William Paley (*The Principles of Moral and Political Philosophy* [7th ed., Philadelphia, 1788], Book VI, chap. VIII) on the necessity of separation, Story opined that "The general reasoning by which the maxim is supported, independently of the just weight of the authority in its favor, seems entirely satisfactory. What is of far more value than any mere reasoning, experience has demonstrated it to be founded in a just view of the nature of government, and the safety and liberty of the people. And it is no small commendation of the Constitution of the United States, that instead of adopting a new theory, it has placed this practical truth as the basis of its organization." (*Ibid.*, I, 392.)

[27] *The Development of American Political Thought* (Princeton, 1930), p. 49.

[28] *Ibid.*, pp. 51–52. Cf. p. 52 n. for Carpenter's statement concerning an exposition of the doctrine of separation of powers before the *Esprit des Lois*.

writer of their own or preceding times. They harbored no desire of revolution, no craving after untried experiments. They wrought from the elements which were at hand, and shaped them to meet the new exigencies which had arisen. The least possible reference was made by them to abstract doctrines; they moulded their design by a creative power of their own, but nothing was introduced that did not already exist, or was not a natural development of a well-known principle. The materials for building the American constitution were the gifts of the ages.[29]

Somewhat contradictorily, however, the historian hails Montesquieu as a theoretician of considerable importance.[30]

Edward Channing, speaking of French influence on the Declaration of Independence, affirmed that Jefferson "returned to America in 1790, greatly influenced by French ideas. But there is not the least evidence that in 1776 he knew anything of French political writers, except Montesquieu, and in the latter's book there is no statement of the natural equality of man. The Americans received valuable material aid from France. Their theories they inherited from their fathers, as their portion of the common heritage of the English race." [31]

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[29] *History of the Formation of the Constitution of the United States of America* (New York, 1882), II, 322.

[30] Elsewhere he writes:

"The tripartite division of government into legislative, executive, and judicial, enforced in theory by the illustrious Montesquieu, and practiced in the home government of every one of the American states, became a part of the constitution of the United States, which derived their mode of instituting it from their own happy experience." (*Ibid.*, II, 327.) And again: "To many in the assembly [of 1787] the work of the great French magistrate on the 'Spirit of Laws,' of which Washington with his own hand had copied an abstract by Madison, was the favorite manual; . . . ." (*Ibid.*, II, 9.)

[31] *The United States of America 1765–1865* (New York, 1896), p. 87. The Index (1932) to the author's *A History of the United States* (New York, 1905–25) reveals no references to Montesquieu.

Jefferson arrived home December 23, 1789.

According to Benjamin F. Wright, Jr., institutional history, not the writings of Montesquieu, influenced the framers of the American constitutions.[32]

Apropos of the American pamphlets of the fifteen-year period leading up to 1776, Herbert Friedenwald wrote the following opinion:

> Montesquieu, it is true, was well-known and often cited in their arguments, but the views he held distinctly showed the influence of his visit to England and of the philosophy of Locke. In fact, the doctrine of the separation of powers, upon which Montesquieu laid so much stress, and which is perhaps the best known of his contributions to political science, is not much more than a reproduction of the gist of Locke's twelfth chapter.[33]

Whatever the correctness of his view, one finds Friedenwald, on the subject of the state constitutions drawn up in the revolutionary period, speaking of "the separation of powers, made familiar by Montesquieu, [as] characteristic of all, ..."[34]

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[32] "The Origins of the Separation of Powers in America," *Economica,* XIII (May, 1933), 184:

"It has been the argument of this essay that the framers of the first American constitutions were impressed by the separation of powers theory only because their own experience, as they interpreted it, confirmed its wisdom, and also that the particular applications of this principle which they wrote into their fundamental laws were drawn directly from their own institutional history and virtually not at all from the writings of Montesquieu, or any of the other exponents of that doctrine. The authors of the State constitutions altered the frame of their governments no more than was made necessary by the transfer of authority from Crown or proprietor to people. The men who drafted the national Constitution dealt with the materials familiar to them in their States." (Cf. also pp. 169 ff.)

[33] *The Declaration of Independence. An Interpretation and an Analysis* (New York, 1904), p. 198.

[34] *Ibid.,* pp. 204–5.

"Again, the separation of powers, made familiar by Montesquieu, was characteristic of all, though the legislature, so much exalted by Locke as the exponent of the popular will, was now given as great prominence as Parliament had acquired in England."

The opinion of William G. Hastings is of especial interest. While declaring that "Montesquieu is par excellence the generalizer of English institutions and was so accepted in America," Hastings asserts that the principle of separation is not "the most pervading [and influential in America] of Montesquieu's generalizations relating to English institutions." This "far deeper and profounder generalization," moreover, Hastings insists, came to America through the writings of Blackstone.

It is the proposition clearly set forth in the "Esprit des Lois" that the fundamental principle on which English institutions have been developed is individual liberty and that the basis for this leading principle is the solidity of property rights and equality of the citizen in regard to them.[35]

The conclusions of Henry Jones Ford[36] run even more

[35] "Montesquieu and Anglo-American Institutions," *Illinois Law Review*, XIII (1918–19), 419–30.

"Montesquieu's name occurs at least once in the text of the commentaries. There are a few citations of it in Blackstone's notes, though not many. There is, however, not an atom of question as to where Blackstone got his notion of a distinctly separate judiciary as well as that of complete distinction between the powers of the Crown and the powers of Parliament. Still less is there any question of where he got his notion of fundamental rights. There is no more question that Blackstone's greatest generalization, viz., that the whole ensemble of English laws and institutions exists for the purpose of promoting the liberty, or as he calls it, the liberties of the individual, comes from Montesquieu, than there is that our own statutes and constitutions derive that same doctrine from Blackstone; and, of course, Blackstone's liberty is before all else the liberty to own, keep, enjoy, and dispose of one's property. This is his development of Montesquieu's liberty, which was the right to do what the laws permitted."

"A greater field, however, for the exploitation of this generalization was shortly opened. Not only was Blackstone made at once the law authority for the colonies so that this generalization was promptly incorporated into constitutions and statutes on this side of the Atlantic, but James Madison, 'the father of the Constitution' with his own hand wrote out for Washington's use a translation of so much of the 'Esprit des Lois' as bore specifically upon the English constitution."

[36] *Alexander Hamilton* (New York, 1920), pp. 216–19.

"One of the points made by the opponents of the new Constitution was that it violated the principles of constitutional government as stated by

counter to the cherished beliefs of some critics. For an exposition of the British Constitution, the framers of the American instrument, he says, looked not to the *Spirit of Laws* but to Blackstone's *Commentaries.* Of still greater pertinency to the present discussion, he affirms that opponents of the new government charged that it violated constitutional principles laid down in Montesquieu. The "favorite citation" by the Anti-Federalists from Montesquieu, moreover, was not the separation principle, but the publicist's dictum on the necessity of confining republics to small territories. But there is no evidence, he states, "that doctrinaire opinion of the Montesquieu type" played a considerable role among the Anti-Federalists. Although he does admit a certain influence of Montesquieu's rea-

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Montesquieu. Logically, it is only fair to say that the point was well taken. The truth is that the framers of the Constitution were not animated by doctrinaire notions of government but by the need of practical measures to arrest the drift to anarchy and to establish national authority. The model they had in mind was the English constitution, and for theoretical exposition of it they looked to Blackstone's *Commentaries* and not to Montesquieu's *Spirit of the Laws.* Nor is there any evidence that doctrinaire opinion of the Montesquieu type formed any considerable element of Anti-federalist opinion. The force which that possessed was derived from the prejudices and interests of local politics. Its favorite citation from Montesquieu was his dictum that 'it is natural to a republic to have only a small territory; otherwise it cannot long subsist.' To this argument, which was urged by Clinton, Hamilton made a strong reply in No. 9 of *The Federalist,* on 'The Union as a Safeguard against Domestic Disturbances.' It may be added that this particular doctrine of Montesquieu was strongly condemned by Jefferson in 1801, when he bluntly characterized it as 'a falsehood.' "

"To refute it [the Montesquieu doctrine of separation] was one of the tasks he [Madison] assumed in his contributions to *The Federalist.* In Nos. 47 and 48 he examined at length the constitutional significance to be properly allowed to the doctrine of the separation of the powers. With a logical evasiveness rather characteristic of his mentality he did not attempt to state or analyze Montesquieu's own formulation of his doctrine but, after mentioning that Montesquieu derived the doctrine from his study of the British constitution, he remarked then: 'Let us recur to the source from which the maxim was drawn.' He then proceeded to give an account of the British constitution, which is really Blackstone's and not Montesquieu's, ..."

soning on the separation principle in the defeat in the First Congress of the power of executive recommendation, Ford's opinion with regard to the French publicist's influence on Madison, "Father of the Constitution," is truly iconoclastic. Madison, said he, did not accept Montesquieu's doctrine of the separation of powers.

"Without developing the American constitutional principle, Montesquieu," writes Ray Forrest Harvey in a recent study on Burlamaqui in American constitutionalism, "merely presented the idea of separation into legislative, executive, and judicial. . . . It is not contended that Montesquieu was not accepted authoritatively by the Americans. It is maintained, though, that the Americans were forced to read into Montesquieu their own peculiar application of the idea. Whereas, in the teachings of Burlamaqui they found an express statement of the very position for which they contended. In view of the wide dissemination of his work in America, it may be submitted that he contributed to this concept." [37]

It has already been pointed out that C. E. Merriam credited Montesquieu with having exercised, through his doctrine of separation, the strongest influence of all French thinkers on American political theory. Merriam maintains that "The great reservoir from which the Fathers drew was the English political theory of the preceding century—the ideas of Sydney, Locke, and the English Whig revolutionists. This was the origin of the fundamental doctrines to which the Patriots adhered." [38] Elsewhere in the work from which the foregoing reference

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[37] *Jean Jacques Burlamaqui. A Liberal Tradition in American Constitutionalism* (Chapel Hill, 1937), p. 156.

[38] *Op. cit.*, pp. 336–37.

to Montesquieu is extracted, he discusses more at length the place of the French author in American thought.

The French radical influence upon the Revolution was comparatively small. Montesquieu's *Spirit of Laws* (1748) was known to the colonists, and the doctrines therein contained were frequently quoted. But many of the features admired in Montesquieu were derived from his study of the English constitution and the English political system. This was eminently true of his celebrated doctrine of the tripartite division of governmental powers, which he had found or thought he found in the English constitution. Many of the other projects advocated by him were also derived from his study of English institutions.[39]

The writer of the Declaration himself was little affected by French thought, Merriam states:

The extent of the French influence upon Jefferson was, however, far less than is generally supposed. Montesquieu and Rousseau, who might be presumed to have had a large share in determining his views, seem to have affected him very little. Montesquieu he held in no high esteem. "I am glad," he says, "to hear of anything which reduces that author to his just level, as his predilection for monarchy, and the English monarchy in particular, has done mischief everywhere, and here also to a certain degree."[40]

According to Merriam, "when Jefferson's rivals wished to detract from his fame as author of the Declaration, they could point to the substance of this instrument in the

[39] *Ibid.*, p. 91.

[40] *Ibid.*, pp. 167–68. Cf. *idem*, "The Political Theory of Jefferson," *Political Science Quarterly*, XVII (1902), 41. Merriam points out that "The only French work cited with enthusiasm [by Jefferson] is that by Destutt de Tracy, *Commentaire sur l'Esprit des Lois*, of which Jefferson had a translation made into English (1811), so that it might circulate freely in this country" (*A History of American Political Theories*, p. 168). Cf. *idem*, "The Political Theory of Jefferson," p. 42.

words of Locke; the ideas were the common property of the time—not borrowed from Rousseau, Montesquieu or Helvetius."[41]

Charles C. Thach, Jr., in a study of the American Presidency, also presents several conclusions with regard to the position of Montesquieu in American thought. The gist of his remarks is to be found in the following statement when, speaking of the influences which resulted in the creation of a strong national executive, he says:

> The dogma of separation of powers and that of checks and balances, as preached by "the famous Montesquieu," whose name was on every man's tongue, and by "the learned Blackstone," whose book was, in Patrick Henry's phrase, "in every man's hand," conditioned political thought, as did their interpretations, or rather misinterpretations, of the British constitutional system. But, it is submitted, they were not the determining influences. Otherwise, their teachings would not have meant one thing in 1776, another in 1787.[42]

And again:

> It was through the interpretation of the British constitutional system as a contrivance of checks, Lords against Commons and both against the Crown, that Montesquieu and Blackstone had their greatest influence. Men were taught to think of government, in fact all political life, as a conflict of opposing interests rather than as a matter of coöperation. From the nature of things, however, this meant, when applied to the American system, chiefly that a strong national executive was needed to counterbalance legislative predominance. Neither theorist nor foreign model was needed to demonstrate that fact.[43]

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[41] *Ibid.*

[42] *The Creation of the Presidency 1775–1789—A Study in Constitutional History, Johns Hopkins University Studies in Historical and Political Science,* Series XL, No. 4 (1922), 169.

[43] *Ibid.*, p. 170. For other references to Montesquieu, cf. pp. 74, 77 n., 95. "The truth is," Thach states (p. 171), "that the Fathers used the theorists as sources from which to draw arguments rather than specific conclusions."

V. L. Parrington also, admitting that the French publicist was widely quoted, believes however that

> In elaborating a system of checks and balances the members of the convention were influenced by the practical considerations of economic determinism more than by the theories of Montesquieu.[44]

To conclude this detailed and critical review of scholarly opinion, lengthy but necessary if the problem is to be viewed in the proper light, one point only remains to be considered. That is the relation of Montesquieu to the development in America of a philosophy of Natural Law. F. N. Thorpe, it was noted, proclaimed enthusiastically the influence of Montesquieu on the Declaration of Independence. And Merriam, as just seen, was almost equally emphatic in denouncing any French influence on the document. Here again on a significant point one finds utter disagreement with regard to the real facts concerning Montesquieu's part in eighteenth-century American thought. Nor is this disagreement confined to such earlier expressions as those of Thorpe and Merriam. On natural rights philosophy as well as theories of government, differences of opinion continue to exist. The more recent conclusions of Carl Becker and C. F. Mullett are cases in point.

On the subject matter of the Declaration, Becker writes:

> Since these sentiments of the day were common in France, and were most copiously, and perhaps most logically, expressed there, it has sometimes been thought that Jefferson and his American contemporaries must have borrowed their ideas from French writers, must have been "influenced" by them, for example by Rousseau. But it does not appear that Jefferson, or

[44] *The Colonial Mind 1620–1800* (New York, 1927), p. 282.

any American, read many French books. So far as the "Fathers" were, before 1776, directly influenced by particular writers, the writers were English, and notably Locke. Most Americans had absorbed Locke's works as a kind of political gospel; . . . .[45]

On the other hand, Mullett in a still more recent study, while not exaggerating his influence, is inclined to attach a certain importance to Montesquieu in the development of and insistence on Natural Law among the colonists. He points to the youthful essay of Alexander Hamilton, *The Farmer Refuted,* in which he advised Seabury "to apply himself without delay to the study of the law of nature, through the writings of Grotius, Pufendorf, Locke, Montesquieu, and Burlamaqui."[46]

This survey of scholarly opinion leads only to the same impasse previously indicated by the conflicting statements of Édouard Laboulaye and James Breck Perkins. It is certainly not the purpose or the province of this study to question the validity of any well-drawn conclusions regarding the influence of Montesquieu in America. A clear and logical understanding of the problem, however, makes imperative at this point a critical summary of attitudes and methods, generally, concerning the subject at hand.

Explanation of antithetical points of view may lie in different conceptions of the genetic processes of governmental instruments. Coolidge long ago pointed out and discussed the three following theories held in regard to the Constitution:

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[45] Carl Lotus Becker, *The Declaration of Independence—A Study in the History of Political Ideas* (New York, 1922), p. 27.

[46] Charles F. Mullett, *Fundamental Law and the American Revolution 1760–1776* (New York, 1933), p. 189.

1. It is unprecedented. [Coolidge quotes Gladstone's famous remark in his essay on de Tocqueville's *la Démocratie en Amérique* that the Constitution was "the most wonderful work ever struck off at a given time by the brain and purpose of man"; also John Stuart Mill's declaration that "the whole edifice was constructed within the memory of man, upon abstract principles."]

2. In its chief features "it is a skillful synthesis of elements carefully selected from those entering into the composition of the then existing state governments."

3. It is a faithful copy, so far as it was possible to make one out of the materials it had, of the contemporary constitution of England.[47]

Or, again, an explanation of conflicting opinion may lie in part in faulty deduction and in subsequent perpetuation of error. In this respect the methods of deduction employed by Bondy[48] are open to criticism. When he

[47] *Op. cit.*, pp. 5 ff. Cf. on Coolidge's second point William C. Morey, "The Genesis of a Written Constitution," reprinted from *Annals of the American Academy of Political and Social Science* (April, 1891), pp. 529–57. Morey's explanation of the "origin" of the Federal Constitution is of pointed interest here. Rejecting both the "fiat" and "faithful copy" theories, and denying that it was founded on a body of institutions which "existed merely in the form of customs," Morey declared that the Constitution was "based upon successive strata of written constitutional law." The Constitution, he maintains, evolved on American soil from the written charters of trading companies. Written colonial constitutions and the constitutions of the thirteen states were evolutionary stages.

". . . we consequently find one general type [of colonial government] prevailing throughout all the English colonies in America. This general type was, as we have seen, characterized by three essential features: (1) a governor, with a deputy-governor, who possessed chief executive authority; (2) a council of magistrates, which acted as an advisory body to the governor, and which in connection with the governor exercised judicial functions; (3) an assembly of freemen, either primary or representative, which in connection with the governor and council possessed the powers of legislation. The subsequent political changes, which resulted in the modifications of this primitive type and which were embodied in the later state constitutions, and the extent to which these changes were due to English influences, have been as far as possible excluded from this discussion." (Pp. 555–56.)

Cf. also the more recent opinions of Benjamin F. Wright, Jr., *loc. cit.*

[48] Cf. *supra*, n. 9.

quotes what may be termed analogical statements of the separation of powers principle from utterances of Washington, Madison, John Adams, and others [49] to prove how "saturated" were their minds with the philosophy of the French publicist, his proof of influence, direct influence, to say the least, is exceedingly tenuous. Their minds may have been, and were, saturated with the philosophy of others. Bondy quotes Blackstone to show that if the powers were not separated there would be no liberty.

Certainly there is no doubt of the tremendous popularity in latter eighteenth-century America of the principle of separation of powers. But Montesquieu was not the first writer to perceive the importance of the principle. Aristotle, in the *Politics,* recognized in every state the existence of the three powers.[50] John Locke wrote "Of the Legislative, Executive, and Federative Power of the

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[49] Cf. William Bondy, *op. cit.,* pp. 17 ff.

[50] Cf. E. Fuzier-Herman, *La séparation des pouvoirs d'après l'histoire et le droit constitutionnel comparé* (Paris, 1880), pp. 9–10. A translation of pertinent remarks by Fuzier-Herman follows:

"The very principle of the distinction between the three powers is set forth in the clearest manner in the *Politics* of Aristotle: there are, he says, three parts [*parties*] in every State: the general assembly deliberating upon public affairs . . . , the corps of magistrates . . . , the judiciary body. . . . And the author, not content to call attention to the fact [*faire observer*] that all differences between the known forms of government derive in sum from the organization and distribution of these three elements, points out to the legislator that in every constitution their proper organization and distribution is of the utmost importance [*l'auteur . . . signale au législateur que là est vraiment le point délicat de toute constitution*].

The ancients, contrary to the assertion of Montesquieu, were then familiar with the separation of powers; they were familiar [*connaissaient*] with it not only in popular government, but also in the government *'d'un seul,'*. . . ."

He gives as reference *"Op. c°,* L. VI, chap. II." (Cf. B. Jowett, trans., *The Politics of Aristotle* (Oxford, 1885), I, 133.) Concerning the familiarity of the ancients with separation of powers, cf. the recent study of L. M. Levin, *op. cit.,* pp. 127 ff.

Commonwealth." [51] To the writer's knowledge, however, Montesquieu was the first modern to incorporate into literary doctrine the threefold division as we now know it, the first to point out that the preservation of liberty depends upon the separation of the executive, legislative, and judicial powers of government.[52] James Madison even, in Number 47 of *The Federalist,* wrote that "The oracle who is always consulted and cited on this subject, is the celebrated Montesquieu. If he be not the author of this invaluable precept in the science of politics, he has the merit at least of displaying and recommending it most effectually to the attention of mankind." Whether or not Madison's first statement was in accord with the facts remains to be seen. Both Blackstone [53] and De Lolme [54] were influenced by Montesquieu's doctrine. One finds it expressed by William Paley.[55] And John Adams wrote an entire book,[56] heavily documented, to show the absolute necessity of separating the executive, legislative, and judicial powers, and also to defend the general system of checks and balances. These writers were known to the Fathers. Two scholars, furthermore, maintain that the principle was set forth before Montesquieu, in a work known in the colonies.

According to Gettell, "The doctrine of separation of powers was expounded before Montesquieu by P. de

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[51] *An Essay concerning The True Original Extent and End of Civil Government . . .* (Boston, 1773), pp. 77 f.

[52] *Spirit of Laws,* XI, chap. VI. Cf. Herman Finer, *op. cit.,* I, 153 ff.

[53] *Commentaries on the Laws of England* (18th ed., London, 1829). See Book I, pp. 146, 268–69.

[54] *The Constitution of England . . .* (Dublin, 1775).

[55] *Op. cit.,* Book VI, chaps. VII and VIII.

[56] *A Defence of the Constitutions of Government of the United States of America* (Philadelphia, 1787).

Rapin-Thoiras, in his *The History of England* (1732–1733). [and] This book was quoted by a number of the American Revolutionary writers." [57]

"The doctrine of the separation of powers," W. S. Carpenter likewise affirms, "was expounded by at least one eighteenth century writer before Montesquieu, i.e. P. de Rapin-Thoyras, *The History of England* (1732–1733). This book was known in the American colonies and was quoted by a number of the Revolutionary pamphleteers." [58]

From his own study of Rapin's weighty tomes, the author cannot agree that Rapin's description of the traditional division of King, Lords, and Commons has any close connection with the thoughtful doctrine expounded by Montesquieu. Nevertheless, students of American history and politics of the eighteenth century know that separation of the legislative and executive branches was generally observed in the colonies before the publication of the *Esprit des Lois* (1748).

Four years before this date, moreover, the author can cite the following official protest of the New Jersey House of Assembly against the union of judicial and legislative functions:

> Resolved, That it is the opinion of this Committee [committee of the whole House], that it is inconsistent with that Freedon and priviledge the people of this colony (by their happy Constitution have a right to enjoy) that the same person should be Chief Justice at the same Time one of his Majestys Council in this Colony.[59]

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[57] *Op. cit.*, p. 102 n.

[58] *Op. cit.*, p. 52 n.

[59] *Archives of the State of New Jersey* (Trenton, 1891), First Series, XV, 371 f. Cf. also pp. 375, 378, and 405.

This resolve was prompted by a definite, clean-cut case in which the principle of separation of powers, as shortly afterward enunciated by Montesquieu, was violated.

William Maclay, to cite at present only one contemporary statement of the following nature, when speaking in the House of Representatives of Pennsylvania, February 24, 1796, on the subject of the Virginia Resolutions, declared correctly or incorrectly that "The distinctions of judicial, executive and legislative powers, are admitted and allowed by almost every author who has delivered sentiments on political subjects."[60]

In short, from the foregoing summary and criticism one very definite conclusion emerges. Some distinction will have to be made between the direct or indirect, non-influence or quantum of influence of Montesquieu in America.

Americans who make the pilgrimage to Monticello are reminded by the reading on Thomas Jefferson's tombstone that beneath is buried the "Author of the Declaration of American Independence." Carl Becker's excellent study of the Declaration,[61] however, makes it eminently clear that some expression such as redactor or editor-in-chief, not author, would be in greater accord with the facts. Jefferson himself admitted as much when concerning its origin he avowed that

> Neither aiming at originality of principle or sentiment, nor yet copied from any particular and previous writing, it was intended to be an expression of the American mind, ... All its authority rests then on the harmonizing sentiments of the day, whether expressed in conversation, in letters, printed

[60] *Gazette of the United States*, Feb. 29, 1796. Cf. *idem*, *Aurora General Advertiser*, Feb. 27, 1796.

[61] Cf. *supra*, n. 45.

essays, or in the elementary books of public right, as Aristotle, Cicero, Locke, Sidney, etc.[62]

How did the Federal Constitution come into being? Was this document, of which Gouverneur Morris was the editor-in-chief, "struck off," to use Gladstone's words, within the Convention walls? Or was it a "faithful copy" of the contemporary English Constitution? Or, as some have also suggested, did the document simply embody ideas, long current, which were entirely English in origin?

Only thirteen years after its birth, the writer of a political essay was toying with this very problem when he declared that

> Whether the framers of the American constitution were controlled by an happy necessity of political situation; whether their profound acquaintance with the most correct theories of government determined the frame of the system; or whether a manly force of mind, combined with scientific skill, aided by much personal experience, and influenced by a respectful attention to preconceived opinions, led to a system so original in its structure, so intervolved in its parts, so compacted by the association of the whole; whether and how far any or all of these causes operated to produce the American constitution, one thing is certain. . . . The citizens of the New World have abundant cause to felicitate themselves on their political destiny.[63]

How close a parallel between one of the suppositions expressed in this passage and the statement of Jefferson with regard to the origin of the Declaration! Such a

[62] *The Writings of Thomas Jefferson* (Memorial ed., Washington, 1903–4), XVI, 118–19.

[63] Part of an extract printed by the *Gazette of the United States,* Oct. 18, 1800, from an *Essay on Political Society.* The essay was published by William Young (Philadelphia, 1800).

concept might well be applied to the writing of the Constitution. Max Farrand's day by day reconstruction of the work of the Convention [64] admirably verifies the essayist's conjecture that possibly

> a manly force of mind, combined with scientific skill, aided by much personal experience, and influenced by a respectful attention to preconceived opinions, led to a system so original in its structure, ...

In spite of the fact that this latter mode of production, most logical, was precisely the one followed, all three methods of "writing" the Constitution, as above differentiated by Coolidge, are implied in the array of contradictory opinions regarding Montesquieu's influence.

It is unthinkable that one should attribute to Montesquieu, for example, the source of the Constitution's principle of separation of powers purely on the basis of its ideological or phraseological resemblance to the exposition of this principle in the *Spirit of Laws*. On the other hand, it is too presumptuous to deny any importance to Montesquieu and his reasoning on this point simply because the principle of separation was, in some fashion, observed in many of the state governments.

In short, it is necessary to know as exactly and definitively as possible the part of Montesquieu in the "preconceived opinions," in the "harmonizing sentiments of the day." [65]

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[64] *The Records of the Federal Convention of 1787* (New Haven, 1927).

[65] A. C. Coolidge, in his brief but stimulating study (cf. *supra*, n. 8), was keenly aware of the magnitude and difficulty of problems of influence:

> "Who were the theoretical writers that had most influence in America? and what was the nature of that influence? This is no easy question to answer

Thus in collating statements such as those of Édouard Laboulaye and James Breck Perkins, a "strawman" is not set up just to be knocked down. Somewhere between the extremes of the former's *"Oui, sans doute"* and the latter's absolute denial of any influence of French thinkers on the American colonists, somewhere between the contradictory assertions of the scholars marshaled above, probably lies the truth.

A French officer, the Marquis of Chastellux, fought in America with the revolutionary army. When the opportunity to travel on this continent offered itself, the Marquis took advantage of it. A record of his movements and observations was soon put into book form and published.[66] Perkins himself, in the book from which his opinion concerning the origin of American political institutions was extracted, draws many times upon the *Voyages* of Chastellux. It so happens that one of the Marquis's aides-de-camp was young Baron de Montesquieu, present with him in America. Chastellux related this amusing anecdote of their departure from Albany, a translation of which follows:

When my sleighs were ready, I took one of them to go take leave of Madame Schuyler and her family; then I came back and found Colonel Hugues waiting for me at the gates of the city. He had learned since our separation that Baron de

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with accuracy, as the fact that a man expresses an idea similar to one of some other great author does not prove that he has copied from the author or even read him" (p. 17). He recognized also the complexity of a related problem: "there is . . . [a] field of inquiry which no one, to my knowledge, has yet really entered into, and which is too vast for me to be able to give more than a slight idea of it here. What were the general ideas of Government entertained by the founders of the Constitution, what induced them to prefer one institution to another" (p. 9).

[66] *Voyages de M. le Marquis de Chastellux dans l'Amérique septentrionale dans les années 1780, 1781, & 1782* (Paris, 1786). 2 vols.

Montesquieu was the grandson [67] of the author of the *Spirit of Laws*. Joyful over this discovery, he asked me to present him again to one who bore so respectable a name; and a few moments later, as I expressed to him how very touched I was by the service he was rendering me, and at the same time my regret at not being able to pay my debt to him, he said to me with truly amiable feeling: "Very well! since you wish to do something for me, try to procure for me a French copy of the *Spirit of Laws*. I do not speak your language, but I do understand your books, and I shall be happy to read this one in the original." I promised to get a copy of it for him, and I was fortunate enough to be able to make good my word on returning to Newport.[68]

Indeed, this story of Colonel Hugues is an isolated incident; and yet it is a bit unusual, even disconcerting, to find a quartermaster of the state of New York so eager to devour a rather formidable book, especially when the book is in a language not his own.

The matter of influences aside, the *obiter dicta* of some writers concerning the widespread unfamiliarity of colonial Americans with the names and works of French authors may possibly be subject to revision, especially when confronted with observations of more recent investigators in colonial history. James Truslow Adams has remarked that in the early 1760's

the number of French books in the booksellers' notices increase notably. In 1762 and 1763 works by Montesquieu, Voltaire, Rabelais, Racine and other French authors were offered for sale in the principal journals in the North and South. Of

[67] Cf. R. Céleste, "Un Petit-Fils de Montesquieu en Amérique," *Revue philomathique de Bordeaux et du Sud-Ouest,* 5è année, No. 12 (Bordeaux, December 1, 1902), p. 17. For passing references to this grandson of Montesquieu who followed Rochambeau to America, cf. L. Chotteau, *Les Français en Amérique* (Paris, 1876), pp. 167, 407.

[68] *Op. cit.,* I, 369–70.

these works the most popular appear to have been Rousseau's *Emile* and *Nouvelle Héloïse* and Montesquieu's *Spirit of Laws,* the last usually in the enormously popular two-volume English translation. Rousseau's *Contrat Social* did not appear in the colonies until the very end of 1764 and seems never to have achieved a wide sale or notable influence. On the other hand, Montesquieu was advertised everywhere, from the Massachusetts to the Georgia Gazettes.[69]

In Boston about this time, Adams writes elsewhere that

although the works of Montesquieu, Voltaire and Rousseau were to be had . . ., and the first was not seldom quoted in argument, the writers to whom the revolutionary leaders appealed were rather the English ones already occasionally mentioned, and above all, Locke.[70]

In the early seventies the same observer notes that

The influence of French fashions and literature was increasing, notably that of Montesquieu whose false views of the English Constitution were largely to mould American opinion. We now find him quoted with considerable frequency, and even a full-page advertisement proposing to publish an American edition of his works "which ought to be in every Man's hands."[71]

Bernard Faÿ, in the following translated passage, corroborates this testimony:

But the great philosophers were not forgotten. . . . Voltaire was also to be found everywhere, and Montesquieu was even more popular, for his writings got into the universities, which was not the case with Rousseau's, and which happened to those of Voltaire only through chance.

Montesquieu was the most frequently cited. The newspapers

[69] *Provincial Society 1690–1763* (New York, 1928), p. 317.
[70] *Revolutionary New England 1691–1776* (Boston, 1923), p. 288.
[71] *Ibid.,* pp. 386–88.

relate facts and deeds of Rousseau, but they give extracts from Montesquieu . . . numerous definitions taken from Montesquieu are to be found in the two following years [after 1772].[72]

The still more recent and comprehensive findings of Howard Mumford Jones are likewise illuminating. He has made a study of sales advertisements of French works appearing in the public presses of New York and Philadelphia during the last half of the eighteenth century. An examination of approximately nineteen New York newspapers revealed at least eight different advertisements of Montesquieu's writings in this period. His findings for Philadelphia, based upon some fifteen local gazettes, show that there were seventeen separate offerings of Montesquieu, exclusive of possible advertisements in three long, unanalyzed lists of French books for sale by William Cobbett in 1798. While the files of newspapers examined for both cities are by no means complete, Jones points out that they are fullest in the seventies, eighties, and nineties. His comparative findings for leading French authors are of particular interest.[73]

[72] *L'Esprit révolutionnaire en France et aux États-Unis à la fin du XVIIIè siècle* (Paris, 1925), p. 27.

[73] "The Importation of French Literature in New York City, 1750–1800," *Studies in Philology,* XXVIII, No. 4 (October, 1931); "The Importation of French Books in Philadelphia, 1750–1800," *Modern Philology,* XXXII, No. 2 (November, 1934), 157–77. In both studies only the first appearance of an advertisement is noted. Findings for other French authors are as follows:

New York		Philadelphia		
Voltaire	30	Voltaire	45	(equally distributed over period)
Rousseau	11	Rousseau	35	(equally distributed over period)
Fénélon	11			
Le Sage	11	Le Sage	22	
Raynal	8	Raynal	18	(mostly in eighties)
Mme. de Genlis	8	Mme. de Genlis	18	(mostly in eighties)

Jones points out an advertisement, in October, 1775, by one Rivington, New

The question as to whether or not the founders of the Republic were indebted to the author of the *Persian Letters,* the *Reflections on the causes of the rise and fall of the Roman empire,* and the *Spirit of Laws* is perhaps unanswerable. The part played by him in early American political science may continue to be the source of allegations and denials, of debate and speculation, if there are no other avenues of approach to the subject than those hitherto traveled.

Can it be, however, that the answer to the question, baffling so far, actually depends upon the satisfactory solution of a more basic problem? In short, it would seem that conclusions concerning borrowings and sources could not be validly stated until the degree of acquaintance of the early Americans with Montesquieu can be definitely determined. What was their acquaintance with his works, what opinions did they express on his ideas and theories, to what extent did they quote him and use him as an authority? Here is the problem of prime importance. Without its solution the entire question of influence may forever remain beclouded. Only by careful research, consequently, in the very formative period of

York bookseller, "for the benefit of the French schools in New York" ("The Importation of French Literature in New York City," p. 242). Montesquieu was one of the authors named in this advertisement.

Concerning his research for Montesquieu in the Philadelphia papers, Jones comments: "His name appears some seventeen times in the newspapers studied, the 'Spirit of Laws' leading the way in 1764 and appearing irregularly thereafter, the 'Lettres Persanes, 2 tomes' nine years later making a well-nigh solitary appearance. Equally solitary is the 'Grandeur et Decadence of the Romans' included in the auction sale of books belonging to a clergyman who left Philadelphia. A number of entries, of course, list only 'Montesquieu,' or 'Montesquieu, Works.' The Montesquieu items are distributed over the last thirty years of the century." ("The Importation of French Books in Philadelphia," pp. 168–69.)

the government itself can the answers to these questions be found and the "fortune" of Montesquieu among the colonists be measured.

Such an examination is the object of this study. It has been limited to the years 1760–1801, obviously because of their importance. This was a time of revolutions, American and French, the time of the Declaration of Independence and of the writing of the Constitution. It is within this era that national and state political machinery was set up. The year 1760 is chosen because it was around this date that the colonists began to be preoccupied with constitutional matters, theories of government, and the question of liberty. The concluding year, 1801, marks the election of Thomas Jefferson to the Presidency, his accession to which meant the defeat of Federalism and consequently the close of the first great period of controversy concerning the Constitution. This date will also permit opportunity for further study of Jefferson's opposition to Montesquieu, for it was Jefferson who, only a few years before, in 1790, had begun a long and bitter campaign against him. The hostility of his later years however had not always been characteristic. Findings of Gilbert Chinard, after lengthy studies on Jefferson, point to the contrary. Particularly by the edition and publication of Jefferson's *Commonplace Book,* Chinard has made readily available numerous passages which with interest and care the Great Democrat once copied into it from the *Spirit of Laws.*[74]

Two dissertations have been written on the subject of

[74] *The Commonplace Book of Thomas Jefferson—A Repertory of his ideas on government* (Baltimore, 1926). For further details concerning Jefferson's antagonism in his advanced years, a period beyond the limits of this study, cf. G. Chinard, *Jefferson et les idéologues . . .* (Baltimore, 1925).

Montesquieu and the American constitutions, one by Hermann Knust,[75] the other by Fernand Cattelain.[76] Both lie in the field of political science and purport to prove Montesquieu's influence. Knust is especially concerned with the separation of powers theory. Neither has made use of the *Commonplace Book,* or more specifically, neither has dealt with the larger implications created, for example, by the fact of Jefferson's changing attitude towards Montesquieu.

The present study is one of literary history, not political science. In extending to other leading colonial figures and to a more inclusive field an inquiry similar to that made by Gilbert Chinard into the Jefferson-Montesquieu relationship, the author is not primarily concerned with the matter of influence or noninfluence.

The immediate objective is to show the dissemination of Montesquieu's works in America. Since his famous *Spirit of Laws,* first published in French in 1748 and in English in 1750, was an epitome of political philosophy of all time, a book which could hardly be ignored by the well-informed, careful attention is thereafter paid to the impact of this book upon the American mind during a period when the question of the form of government to be given to the new nation was of paramount importance. Such a division of the period is made as to permit a logical and definite appraisal of this impact during the significant and decisive stages of the epoch under consideration. Thus by an application of the methods of literary history in an effort to find out everything known or thought about Montesquieu in America, as far as is practicable

[75] *Op. cit.*
[76] *Op. cit.*

within this period, there may be uncovered materials of possible value to political science. The findings may help to establish a more comprehensive basis for future opinions and decisions involving the problem of influence.

Happily then, one can turn back to the reading matter, to the writings and utterances of eighteenth-century Americans, and find out how they regarded Montesquieu. Books, essays, tracts, printed speeches and sermons were at their disposal and were available in the bookstores of the large centers. Most of the books and many of the tracts were imported, and advertisement of them, as already seen, was made in the newspapers. Persons abroad directed books to colonists and to universities. Thomas Hollis, from London, for example, sent many books to Harvard College. Other American colleges also had their benefactors.[77] Early there were circulating libraries.[78] The writings and letters of leaders of American thought figured importantly in colonial and later literature. An examination of the works of John Adams, Franklin,

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[77] Louis Shores, *Origins of the American College Library 1638–1800* (New York, 1935). On the many donations of Thomas Hollis and other members of the Hollis family to Harvard and concerning benefactors generally of American colonial colleges, cf. Appendix I of this work: "Chronological Checklist of Colonial College Library Donations, 1638–1800." According to Shores (p. 230), the colleges before the Revolution obtained most of their books, and the best, through private donation. In some cases colleges did buy books with their funds. Colleges also, he points out, came into the possession of books by the exercise of special taxes, lotteries, and fee assessments on college members.

One notes, for example, that William and Mary College obtained some books as a result of the action of the Virginia General Assembly in 1734 in appropriating for this purpose a certain duty on liquor (p. 19). In 1784 Louis XVI gave to William and Mary "200 books in beautiful editions" (p. 263), and to the University of Pennsylvania, one hundred books (pp. 39, 88).

[78] On circulating libraries, cf.: Charles Evans, *American Bibliography* (Chicago, 1907), IV, x; Charles K. Bolton, "Circulating Libraries in Boston, 1765–1865," *Publications of the Colonial Society of Massachusetts* (Boston, 1910), XI, 196–207.

Hamilton, Jefferson, Madison, and Washington, to name only a few, has accordingly been made. Likewise, public utterances of molders of opinion, as expressed in debates and conventions, constitute sources of much consequence. Many of these expressions have been turned to account. But a picture of Montesquieu in America based solely upon all the materials enumerated above, and which have been utilized, would still be one-sided. It might reveal the sentiments of the well-bred and well-read and of particular sections of the country; it would not, however, show mass diffusion and views over widely-extended areas. Newspapers, therefore, are drawn upon as most important sources of popular opinion.

John Ward Fenno, well-informed, publisher of the *Gazette of the United States,* was able to declare, as late as 1799, in a fulminatory swan song that

> More than nine tenths of the scanty literature of America, is made up of newspaper reading; this powerful fact, one would imagine, should induce a severe attention to the nature of that sole medium of instruction and information. . . .[79]

An editorial echo of Fenno's statement was heard again in the following paragraph in the same paper for July 11, 1799:

> Amongst the many evils that arise from the predominance of newspapers over every other species of publication in America, it is not the least, that they become the almost exclusive records of many facts and circumstances, the importance of which demands frequent recurrence; thousands of things pass

[79] *Gazette of the United States,* March 4, 1799. Cf. Bernard Faÿ, *Notes on the American Press at the End of the Eighteenth Century* (New York, 1927), p. 14: "There was a great demand for books and newspapers in America, where the average man seems to have read more than was the case in Europe."

away in consequence and after a very short period, virtually cease to exist.

The journals offered their readers not only local news and articles sent in on subjects of timely moment and interest, literary features and advertisements, but also the news brought by ship and courier and, quite frequently, reprints of articles and extracts from other colonial papers. In the two dissertations mentioned above, Cattelain has made only slight, sporadic use of newspapers, and Knust none whatsoever. The author has made a close, careful, and exhaustive examination of important newspapers in the significant sections of the country. *Throughout this book pertinent passages, whether from the newspapers or other sources, are printed textually without change of spelling, punctuation, or accentuation.* The reproductions of such widely scattered passages are of importance to this particular study. Research among these newspapers, dailies, semiweeklies, and weeklies, some of different political complexion, others avowedly nonpartisan, has with few exceptions covered either many continuous years of their existence, or the period from their inception up to March 4, 1801, or in some cases their life span. Information on this point is to be found in the Bibliography. These newspapers are the following:

Boston Gazette or Country Journal
Massachusetts Centinel and the Republican Journal (Boston)
Columbian Centinel (Boston)
Gazette of the United States (Philadelphia. Removed from New York, Oct., 1790)
General Advertiser, and Political, Commercial, Agricultural and Literary Journal (Philadelphia)
Aurora General Advertiser (Philadelphia)

National Gazette (Philadelphia)
Annapolis *Maryland Gazette*
Baltimore *American*
Baltimore Daily Intelligencer
Federal Intelligencer and Baltimore Daily Gazette
Federal Gazette and Baltimore Daily Advertiser
Maryland Journal and Baltimore Advertiser

It can be seen that these journals represent, New York and Charleston in South Carolina excepted, the most important centers of thought in America during the last half of the eighteenth century. Placed together in chronological sequence, the Massachusetts and Maryland newspapers afford a complete annual coverage of the two more widely divergent sections of the country from 1760 to 1801. After the rise of political parties, the capital journals of Philadelphia—the *Gazette of the United States* and the *Aurora*—became respectively the leading organs of Federal and Republican opinion. In view of the impossibility of going through all the gazettes, it is patent that a thorough and consistent study of several representative papers will furnish a much more reliable index of popular thought than the superficial and random perusal of a great number of journals. It is believed that the present choice offers an accurate cross section of American opinion. If no more protracted use has been made of New York papers than that of the comparatively brief New York run of the *Gazette of the United States* until its removal, along with the capital, to Philadelphia, if a gazette from that only important far southern city of Charleston has not been commandeered, the fact is of no real consequence. It is only necessary to know that the common practice of journals of that day was to reprint

articles and extracts of importance which had appeared in other papers, north or south. Even after faction had come to divide the new nation, the gazettes were magnanimous enough to reprint articles originating in the enemy's camp.

Chapter VIII

CONCLUSION

In this study of the fortune of Montesquieu in America from 1760 to 1801, mentions of and quotations from innumerable authors have been noticed. Frequently an American writer would cite more than one author on the same point. This fact serves as a reminder of the danger of pronouncements on the influence of various thinkers, especially in a century when the same ideas were often expressed by several men. In order, therefore, to determine with any degree of certitude questions of influence or noninfluence, it would also be necessary to know rather definitely the fortune of many other writers in this period.

No attempt has been made in this book to study the "influence" of Montesquieu on American institutions. An effort has been made, however, to provide a more comprehensive basis for future opinions and decisions as regards influence by ascertaining as exactly as possible the part of Montesquieu in, to use an expression of Jefferson's, "the harmonizing sentiments of the day." This part being known, it must be carefully weighed upon the delicate scales of currently accepted ideas and practices.

Colonials and later Americans were surprisingly well acquainted with Montesquieu. His writings were to be found among the books of leaders of American thought. One or more of his works were on the shelves of college

libraries and in the collections of library societies and companies. As early as 1750, furthermore, one of these library societies owned English copies of his three masterpieces.

The *Spirit of Laws* was an "American" classic. It was used as an authoritative handbook of political information. It was quoted by New England clergymen in sermons a decade before the Revolution. Patriots such as Samuel Adams and Charles Carroll of Carrollton, shielded by those masks of "Candidus" and "First Citizen," drew upon this book for ammunition in those battles of the pen which preceded the battle of Lexington.

This book was studied in colleges and recommended to law students. John Marshall bought the work in 1785. Ten years before, Thomas Jefferson, in later life a detractor of its author, had laboriously copied from the masterpiece extracts which filled twenty pages of his *Commonplace Book*. James Madison had so studied Montesquieu's treatise as to be able to quote parts of it from memory.

In provocative pamphlets, vital addresses, books, magazines, and official documents, one finds references to or quotations from the French writer. The very insignificance of many of the quotations attests close reading of the *Spirit of Laws*.

Before and after the Revolution, newspaper articles contained extracts, often lengthy, from this book. From it editors of gazettes printed verbatim entire chapters. If this great work on government were suddenly blotted out of existence, a goodly portion of it, certainly the most important parts, could be reconstructed accurately from American newspapers of the eighteenth century.

The findings of this study show that Anglican and

Quaker, Revolutionist and Loyalist, advocate and adversary of the Constitution, Republican and Federalist garnished and reinforced their articles and addresses with citations to Montesquieu. They would cite, moreover, any author with whose writings they were acquainted and whose reasoning was apropos.

It is remarkable that most of the citations to Montesquieu before 1774 had to do with the English Constitution. The publicist's reputation as an authority in America was established by the chapter in the *Spirit of Laws* which treats of this constitution. This authority was subsequently extended to other subjects, as indicated in the preceding pages.

American colonists cited this chapter because it contained a *concise* exposition of the broad principles of their unwritten constitution. Harassed by what they considered unjust ministerial demands and encroachments on their rights, they cited this chapter, furthermore, because of its insistence on separation of powers as the *sine qua non* of liberty.

Colonial charters did not provide for tripartite separation of powers. But there is evidence of a tendency towards such separation. Protests against union of the judicial and legislative and judicial and executive branches, including one of official nature prior to the publication of the *Esprit des Lois,* have been adduced in the foregoing pages. It is not within the province of this book to judge of the importance of these protests. In this general comment on the popularity of Montesquieu's chapter on the Constitution of England, it is only fitting to point out again that there were such protests.

Whenever the name of an author was mentioned in the

countless discussions on tripartite separation of powers that have been noticed, that name, with one exception, was always Montesquieu.

In connection with the findings on this principle, there should also be recalled a statement of Madison in *The Federalist*. In Paper Number XLVII, he wrote as follows: "What I have wished to evince is, that the charge brought against the proposed constitution, of violating a sacred maxim of free government, is warranted neither by the real meaning annexed to that maxim by its author [*sc.*, Montesquieu]; nor by the sense in which it has hitherto been understood in America."

In addition to the subjects of separation of powers and political liberty, which were emphasized in his treatment of the English Constitution, Montesquieu was apparently cited most on confederate republics and virtue. Proponents of the Federal Constitution quoted him on the advantages of a confederate republic; they cited his arguments on this subject to opponents who parried with Montesquieu's dictum that a republic could exist only on a small territory.

He was often quoted on the necessity of virtue in a democracy. Concerning the numerous invocations on this point, the explanation has been advanced that many Americans were skeptical as to the efficacy of paper checks and balances alone to protect their liberty from the designs of ambitious representatives. Madison voiced this skepticism in stressing the indispensability of virtue in the people themselves. In the course of the debates on the Constitution in the Virginia Convention, he spoke thus:

> No theoretical checks, no form of government, can render us secure. To suppose that any form of government will secure

liberty or happiness without any virtue in the people, is a chimerical idea.

Therefore, on the subject of virtue also, Montesquieu continued to serve as guide and mentor to a free and proud people essaying a new form of government.

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VITA

Paul Merrill Spurlin was born in Fayetteville, Georgia, October 2, 1902. He attended public school in the city of Atlanta and entered Emory University in 1921, from which he was graduated four years later with the degree of Bachelor of Philosophy. As the holder of a scholarship granted by the Franco-American Student Exchange, he studied at the University of Lyons during the scholastic year 1925–26 and received the *Certificat d'Études françaises.*

The next four years were spent in teaching: first as Instructor, later as Assistant Professor of French in Birmingham-Southern College, 1926–29; then as Instructor in European history in Emory University, 1929–30.

He entered the Johns Hopkins University in 1930 and was in residence until 1936, when he received the degree of Doctor of Philosophy. During these years he taught French in several departments of the University: as Junior Instructor in the College of Arts and Sciences for five years, as an Instructor in the College for Teachers for five semesters; and he was a member of the staff of the University's summer session, 1934–39.

In 1936, he accepted a position in the Louisiana State University where he is an Assistant Professor of French.